UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COMMUNITY COUNSELING & MENTORING SERVICES, INC.	
and	
DENISE BROWN, an individual	Case 5-CA-255979
NATALIE MEVS, an individual	Case 5-CA-256257
LYNDA THOMAS, an individual	Case 5-CA-260778

Christy Bergstresser, Esq.,
for the General Counsel.
Michael Holmes, Esq., and
James Allen, Esq.,
Cincinnati, Ohio,
for the Respondent.

DECISION

Statement of the Case

PAUL BOGAS, U.S. Administrative Law Judge. On January 6, 7, 8, and 19, 2021, I heard this case remotely using videoconferencing technology. Denise Brown, an individual, filed the initial charge in case 5-CA-255979 on February 7, 2020, and the amended charge on May 29, 2020. Natalie Mevs, an individual, filed the initial charge in case 5-CA-256257 on February 11, 2020, and the amended charge on July 24, 2020. Lynda Thomas, an individual, filed the charge in case 5-CA-260778 on May 26, 2020. The Director for Region 5 of the National Labor Relations Board (the Board) issued the consolidated complaint and notice of hearing (the complaint) on September 2, 2020. The complaint alleges Community Counseling & Mentoring Services, Inc. (the Respondent or CCMS) violated Section 8(a)(1) of the National Labor Relations Act (the Act or NLRA) by: orally promulgating rules prohibiting employees from discussing their

terms and conditions of employment, speaking about how the Respondent runs its program, and speaking derogatorily about the Respondent; making various threats against employees; interrogating employees about their protected concerted activity; creating the impression that employees protected concerted activities were under surveillance; discharging the three individual Charging Parties because they engaged in protected concerted activity, or because the Respondent believed they engaged in such activities; and interrogating employees about the subject of the Board's unfair labor practice proceeding without providing them with proper safeguards.[1] The Respondent denied committing any of the violations alleged.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following Findings of Fact and Conclusions of Law.[2]

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation with an office and place of business in Largo, Maryland, where it is in the business of providing mental health services, including to Prince George's County Public Schools in the State of Maryland. In conducting these business operations, the Respondent annually purchases and receives goods valued in excess of $5000 directly from points outside the State of Maryland, and annually provides services valued in excess of $50,000, to the State of Maryland, which is directly engaged in interstate commerce. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. BACKGROUND FACTS

The Respondent operates an out-patient mental health clinic in Largo, Maryland. At the Largo facility the Respondent provides an afterschool "children's intensive outpatient program" (CIOP), a "multi systemic therapy" program (MST), and a "psychiatric rehabilitation program" (PRP). In addition to the programs provided at its Largo facility, the Respondent has a "school-based program" in which it imbeds therapists at

[1] At trial I granted the General Counsel's motion to amend the complaint to add the last of these allegations. Transcript at Page(s) (Tr.) 700; Administrative Law Judge Exhibit Number (ALJ Exh.)1.

[2] On March 2, 2021, the General Counsel filed a Motion to Correct the Record. No party has filed an opposition to this Motion. The General Counsel's Motion to Correct the Record is granted and received in evidence as ALJ Exh. 2.

elementary schools in Prince George's County, Maryland. Anthony Carvana, Sr., is the Respondent's president and chief executive officer. He founded the Respondent in 2001, and is the only official of the corporation who has the authority to fire employees. Carvana employ his wife and his son at the Respondent. Tonya Pleasant was, at the time of the alleged violations, the Respondent's clinical director.[3] At the time of trial, Pleasant's daughter, Amara Jackson was performing work at the Respondent and had been doing so for approximately 10 years. The Respondent has approximately 30 employees.

In 2019, Carvana hired the three Charging Parties – Denise Brown, Natalie Mevs, and Lynda Thomas – to work full time in the school-based program. Other therapists provided some of the Respondent's school-based services, but Brown, Mevs and Thomas were unique in that they were hired to full-time positions that were 100 percent school based. Tr. 329. Prior to hiring them, the Respondent had never employed full-time therapists assigned strictly to school-based work. Brown and Thomas started working for the Respondent in August 2019 and Mevs started on October 3, 2019. All three are licensed social workers. In addition to hiring the Charging Parties, the Respondent engaged social worker Betty Hepler as a contractor to meet with the three Charging Parties once a week and provide clinical supervision. Hepler had a more advanced social work license and was able to provide Brown, Mevs and Thomas with the continuing education units (CEUs) that are necessary to qualify for their periodic license recertification, and also with the supervision necessary to obtain more advanced social work licenses. The Respondent fired all three of the Charging Parties on December 20, 2019.

B. Charging Party Work Issues

The Charging Parties had a number of work-related concerns. The most significant concerns demonstrated by the record fall into three broad categories: concerns about compensation for work performed outside of the school-based program; concern about potential conflicts between practices at the Respondent and professional guidelines for social workers; and the availability of training bearing on social worker licensure. These areas of concern are discussed briefly below.

Compensation Concerns: When the Charging Parties were hired, Carvana told them that their salaries were for the school-based program. He informed them that they would also have the opportunity to obtain additional compensation by performing therapy work at the Largo facility after their regular "tour of duty." Specifically, they were told that, in addition to their salaries, they would receive 40 percent of amounts that the Respondent itself received from Medicaid for any after-hours therapy sessions that the Charging Parties chose to perform. This was set forth in letters the Respondent

[3] The Respondent stipulated that during the relevant time period both Carvana and Pleasant were statutory supervisors and agents of the Respondent. Tr. 14-15. Pleasant was no longer an employee of the Respondent at the time of the hearing.

provided to Brown and Thomas when Carvana offered them the positions. Once employed, Brown and Thomas initially sought to supplement their incomes by performing multiple therapy sessions at the Respondent's facility after they were done with their work with the school-based clients. However, both of these employees became concerned that the additional amounts reflected in their paychecks for this work was significantly less than what had been agreed upon. Brown, Mevs, and Thomas discussed this compensation issue among themselves and also repeatedly raised it with the Respondent. Carvana testified that he had been informed that Brown told Pleasant that the Respondent's billing practices were illegal. Carvana stated at trial that the reason Brown's and Thomas' paychecks did not cover all the extra therapy that they had previously performed was that the Respondent waited until it received reimbursement from Medicaid before paying the therapists their share of that reimbursement. At one point, Carvana arranged for Thomas to discuss her questions regarding compensation with a payroll staffer, but Thomas did not believe that the staffer had answered her questions. Clinical director Pleasant testified that employees had asked her about the compensation issue, but that she herself did not understand the reimbursement process for that work. Tr. 638-639. Thomas continued to raise the compensation issue with Carvana and Pleasant throughout her employment with the Respondent.

For purposes of this decision, I do not reach a conclusion about whether the Respondent was, in fact, compensating the Charging Parties as agreed upon. I do find, however, that, contrary to the suggestion of Respondent's counsel at the hearing, Tr. 214, the Charging Parties had reasonable, good faith, concerns about their compensation. I note that Carvana himself testified that, due to an oversight, the Respondent had failed to provide Brown and Thomas with bi-weekly statements that explained their compensation for work outside the salaried-positions. Tr. 465-468, 486 ff. Moreover, the record showed that, post-termination, the Respondent discovered it had previously underpaid Brown by $507. Tr. 239-243.

A secondary conflict relating to the compensation issue developed when Brown stated that she wished to stop performing after-hours work because, inter alia, she did not think she was being properly compensated for it. At that time the Respondent allowed her to stop performing most of her non-school-based work, but required her to continue doing one weekly CIOP group therapy session at the Respondent's Largo facility. Carvana told Brown that the regular duties of her salaried school-based program position included supporting the CIOP afterschool program by performing this therapy session at the Respondent's facility. Brown disagreed, and stated that her salary was for the school-based work, that this group therapy was not school-based, and that the information she received at hiring was that this non-school-based work would be voluntary and, if performed, would result in extra compensation. As Carvana conceded at trial, providing services in the CIOP program was not in the written job description for the school-based therapist position. He also conceded that the Charging Parties were hired to perform 100 percent school-based work. General Counsel Exhibit

Number (GC Exh.) 6; Tr. 329.[4] Nevertheless, Carvana told Brown that it would be insubordination if she refused his direction to perform the CIOP work. Brown capitulated and continued to perform the work, but also subsequently raised with the Respondent her disagreement with Carvana's position that the CIOP session had always been part of her duties as a school-based therapist.[5] Like Carvana, Pleasant told employees that conducting the CIOP therapy session at the Respondent's facility was a required duty of the school-based therapist position. She did this during a staff meeting that was attended by Brown, Mevs, and Thomas. Afterward, Thomas told Pleasant that she had previously been told that conducting the CIOP therapy group was voluntary, but Pleasant said it was not voluntary and assigned Thomas to conduct a particular CIOP therapy group.

Concerns Regarding Respondent's Practices: The Charging Parties also testified that they had concerns about the Respondent's practices relating to the therapy sessions. According to Brown and Thomas, the Respondent had a practice of a having a therapist who did not attend the session create, or sign off on, the therapy notes for the session. Thomas met with Pleasant and said she would refuse to sign off on notes for sessions she did not attend. According to Thomas, Pleasant responded that "social workers are supposed to sign off on it." Thomas discussed this issue with Brown, and Brown opined that if they signed treatment notes for sessions they did not attend they would be putting their licenses in jeopardy. Brown testified that she complained to the Respondent when another therapist was assigned to prepare treatment notes for a session that Brown conducted and which the other therapist did not attend.

Brown and Thomas had additional concerns about the way the Respondent conducted the afterschool sessions. Brown complained to the Respondent that a non-therapist PRP staffer who provided transportation and recreational support to children was insisting upon attending the therapy sessions that Brown conducted with children. Brown believed that this was improper because the parents or guardians of the children in the therapy sessions had not consented or waived privacy rights with respect to the PRP staffer and also because only licensed therapists were supposed to be present with clients at therapy sessions. Brown complained about this to Carvana and Pleasant. Brown testified that Carvana said he would take care of the problem, but that the PRP staffer continued to attend.

In addition, Brown and Thomas discussed concerns about other staffers interrupting therapy sessions and "yanking" children out in a rough manner. The

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[4] Carvana testified, however, that when interviewing Mevs for the school-based therapist position he told her that, in addition to the school-based work, she "would also have responsibility for supporting the CIOP piece once a week." Tr. 321. Carvana hired Mevs in October, but had hired Brown and Thomas in August.

[5] Carvana testified that Brown had "gone back on her word about" doing the CIOP sessions, but he conceded that Brown had, in fact, continued to do that work. Tr. 319 and 336-337.

Charging Parties discussed this and Thomas expressed the view that being a party to these sessions put their social work licenses at risk. After Brown and Mevs discussed an incident of this type, Brown contacted Child Protective Services to make a complaint about a staff person. Thomas also had discussions with Mevs about their "frustrations and some of the things that were going on" at the Respondent. Tr. 79.

Continuing Education and Supervision: At the time of hiring, the Respondent informed Brown, Mevs, and Thomas that the Respondent would provide them with supervision and training that was required for their periodic recertification and progress towards advanced licensure. During their employment with the Respondent, Brown and Thomas did not receive any continuing education units and they discussed this with one another and with Mevs. In addition, during a training on December 20, 2020, which was attended by the three Charging Parties, Mevs publicly expressed her dissatisfaction with the fact that the attendees would not receive continuing education units for the training.

C. Staff Meetings in October 2019

October 24: On October 24, 2019, Pleasant held a new employee meeting for at least ten employees, including Brown, Mevs, and Thomas. The discussion at this meeting revealed to Mevs and Thomas that, contrary to what they expected, the Respondent would not be granting them vacation during the times when the schools where they were based were on vacation. Mevs voiced her concern over this and Thomas nodded to express agreement with Mevs. Pleasant responded to Mevs, "Well, if you want Natalie, you can have all your days off." Tr. 110-111. Pleasant repeated some version of this statement to Mevs once or twice more during the meeting. Although Pleasant used a joking tone of voice, Mevs and Brown testified that they understood Pleasant to threatening Mevs' with loss of employment. Tr. 112, 416. Brown testified that "Pleasant did not like us discussing any days off" and that Pleasant was telling them "you can get fired for asking that question." After the meeting, Brown and Mevs met and discussed their alarm about Pleasant's reaction to Mevs' question.

October 25: The Respondent had an all-staff meeting on October 25, 2019, that was attended by 20 or more employees, including the Charging Parties. The General Counsel alleges that during Carvana's remarks at this meeting he directed employees to bring any problems at work to him and not discuss them with other employees.

Although in its Answer, the Respondent denies that Carvana made the statements alleged to constitute an unlawful prohibition on employees discussing their working conditions with co-workers, at trial Carvana stopped just short of confirming that he did, in fact, make such statements. Carvana testified that at the staff meeting he told employees that if they "had issues" "they could talk to me," but that they should "be careful about who you talk to about your issues about water cooler talk and how they can affect an environment." Tr. 262. Carvana testified that he told the staff that "there had been a lot of water cooler talk," and asked them "to come to me, you know, that I'm open that I want to handle any kind of issues, that they had." He further testified that "issues never get addressed" by co-workers discussing them, Tr.693 and that "the

organization had gone through a period of time where just stuff was just running rampant, and I felt like it was affecting the morale." Tr. 316. Nevertheless, Carvana denied that her had ever promulgated a rule prohibiting communications between employees about work issues. Tr. 694.

Ashley Tate, a receptionist who testified on behalf of the Respondent, reported that, during a meeting about "policies, rules, and regulations," Carvana told employees that if they "felt any type of way . . . about how [the Respondent] was ran" "to come to him, you know, directly rather than going to other staff members to stop the gossip and/or just not to have gossip going on." Tr. 661. Tate added that Carvana made it known that he "has low tolerance for gossip" and "feels as though that if you have any concerns or issues that you should come to him." Tr. 662

The Charging Parties' testimonies regarding Carvana's October 25 statements is generally consistent with the above accounts of the Respondent's witness Tate. According to Mevs, Carvana told the staff: "We won't tolerate you guys talking to each other about your problems. . . . You don't need to talk to each other about it and we have zero tolerance for that." Tr. 119-120. Thomas testified that, during the meeting, Carvana talked about "not discussing pay, you know the paying of the workers,"[6] and that he had warned her that she "better not be discussing pay with any of, any of the workers." Tr. 506. Brown testified that Carvana directed that "if you have any concerns about your job or anything like that, talk to me about your concerns . . . , do not talk amongst yourself." Tr. 419. Brown further reported that Carvana warned: "I don't want to hear people talking amongst themselves . . . about things that you have a problem with because we consider that badmouthing the agency;" "If I hear . . . talking negatively or talking bad about the agency, I'm going to have to do what I have to do." Ibid.; see also Tr. 408-409.

I find that on October 25, Carvana did in fact direct that if employees had any work-related problems they were to bring them directly to him or Pleasant, and not discuss them with co-workers. This was the consistent testimony not only of the General Counsel's witnesses, but also consistent with the testimony of Tate, the Respondent's own witness. In addition, I credit the testimony of the three Charging Parties that Carvana said that he had "zero tolerance" for employees discussing problems among themselves and, if they did so, he would "do what I have to do."[7] That

[6] Thomas did not mention the October 25 date, but did state that it was at the meeting attended by "everybody." I infer that this was the October 25 meeting since no similar all-staff meeting during this timeframe is referenced in the record.

[7] I do not find that Carvana announced at this meeting that employees were prohibited from "badmouthing," or speaking "derogatorily" or "negatively" about the agency. Brown related these statements, but neither of the other two Charging Parties, or any other witness, testified that those statements were made at that time. Based on Brown's somewhat theatrical demeanor, and her testimony as a whole, I find that she was generally a somewhat credible witness, but at times strained to support the allegations. As discussed later in this decision,

testimony, although not specifically confirmed by Tate, was buttressed by her testimony that Carvana indicated to employees that he had a "low tolerance" for employees discussing working conditions among themselves.

The Charging Parties also reported that, during the same October 25 staff meeting, Carvana stated that the Respondent would know if they talked about work issues among themselves because he had "eyes" and/or "ears" at the facility. Tr. 119, 419, 507, 550. I credit this testimony, which was not significantly contradicted by other testimony. The evidence shows that the Respondent had security cameras in hallways and in a meeting room at the facility, and that employees were aware of this. I find that Carvana's statements, especially in combination with the presence of the security cameras, would chill reasonable employees from discussing their work-related concerns with one another in the workplace.

D. Respondent's Meetings with Brown and Mevs in November and December 2019

In November, Tate, the receptionist at the facility, noticed that Brown appeared upset and asked her the reason. Brown and Tate exited the building to talk. Once outside, Brown shared her belief that the Respondent was not paying her properly for the therapy sessions she performed after completing the duties for her salaried position. Brown told Tate that the Respondent was undercompensating her to such a degree for the extra work that better pay could be had at a Target store. Carvana testified that Tate reported this remark to him and said the remark made her uncomfortable.

On or about November 5, 2019, Carvana summoned Brown into Pleasant's office for a meeting with Pleasant and himself. During the meeting, Carvana told Brown that she should speak to him about her issues and "that she did not need to walk around and be nasty and unprofessional about everything." Tr. 260. He asked who she had been talking to. When Brown responded that she had spoken to Tate, Carvana asked what Brown had said. Tr. 407. Brown responded that she had talked to Tate about "work, friendly things." Carvana responded, "you can't . . . be talking about friendly things because you and [Tate] wasn't friends before you got this job." Ibid. Carvana told Brown that he heard she told Tate that she could get better pay at a Target store. Carvana said that Brown "sound[ed] like a disgruntled worker." Tr. 283, 408. Pleasant stated that "if I hear anything more about you talking negatively about the company, then I'm going to have to do what I got to do." Ibid.[8] Brown testified that she understood this to be a threat to terminate her employment. Tr. 477.

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however, I find that on another date – November 5, 2019 – Pleasant instructed Brown not to speak negatively about the Respondent.

[8] Brown testified that during this exchange Carvana also asked her "Who else are you talking to" and also asked if she had been "talking to Ms. Mevs." Tr. 407, 409. Carvana denied that he had done this. Tr. 283-284. I did not find a basis on the record for crediting Brown's testimony on this point over Carvana's contrary testimony. My impression was that both

On November 26, Carvana met with Mevs in his office and expressed concern about her productivity and said that he wished to set a workload threshold for her. Mevs responded that this was acceptable, but that the threshold should not require her to work in the afterschool program or take on extra caseload after hours. She stated that she had been "hired as a school-based therapist and there's . . . plenty of kids that need to be seen, so that's what I would like to be." Carvana responded: "Where is this coming from? Who have you been talking to?" The meeting ended, but Carvana called Mevs back to his office about 10 minutes later and said: "I really want to understand where all this defense is coming from . . . . What's going on? Who have you been talking to?" Mevs responded that she had not been talking to anybody. In fact, Mevs had talked to Brown about Brown's concern that the Respondent did not properly compensate the school-based therapists for after-school therapy sessions. Mevs had also heard co-worker complaints about how the Respondent ran the afterschool programs.

On December 6, Pleasant informed Mevs that she was scheduled to visit a particular school and Mevs was surprised because Carvana had previously told Mevs that she would not have to go to that school since it was far out of her way. The two discussed this in Pleasant's office. Mevs explained that the school was a long drive out of her way and stated that "if it's going to be a permanent thing, I don't think that's going to work out for me." Pleasant responded, "well, you do what you got to do and we'll do what we need to do." Mevs went to the school as directed.

E. Early December Interrogation

Paragraphs 6(d) and (e) of the complaint[9] allege that Carvana and Pleasant unlawfully interrogated employees in "Early December 2019." Although the complaint does not reveal which employee or employees were subjected to these alleged interrogations, the General Counsel's brief states that the employee involved was Thomas, and relies on her testimony to support the allegation. I find that Thomas' testimony on this point was too vague to establish that the interrogation, or interrogations, occurred. Thomas testified that "they called me, and they're like what have you guys been talking about?" Thomas does not narrow down this allegation to early December or any other particular time period during her 4-month tenure with the Respondent. She says that they "called" her, but does not say whether she was called on the phone, called across a room, or called into an office. Although it is fair to infer that the "they" she is talking about were Pleasant and Carvana, I find her failure to clarify which one of the two she claims made the key statements also makes this testimony of suspect. Finally, I note that Thomas' testimony regarding the language

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witnesses, although somewhat credible, did not testify without bias, but rather strained to give testimony favorable to their position in the litigation.

[9] At trial, the complaint was amended to correctly designate as subparagraphs 6(d) and 6(e), these previously mis-designated subparagraphs.

allegedly used was uncertain – she did not purport to testify as to what exactly was said, but rather reports that "they" "*were like* what have you guys been talking about?" Emphasis Added. For these reasons I find that the evidence is too lacking in substance and detail to establish, as a factual matter, that Carvana and Pleasant interrogated an employee in early December 2019.

F. Respondent's Awareness of the Charging Parties' Activities Regarding their Workplace Concerns

As discussed above, Brown and Thomas had concerns that the Respondent was not paying them properly for after-school therapy they performed at the Respondent's facility during the hours following their regular school-based work. They discussed their common concerns about pay with one another. Thomas asked Brown to "help her get help in getting paid." In addition, Brown discussed her pay-related concerns with Mevs. Although Mevs was not engaging in the after-school therapy at that time, the pay issue was of concern to her since the after-school work had also been offered to her. Mevs' concerns about proper compensation for that work was one of the reasons that she told Carvana she was not available for the after-school work. As discussed above, Brown also talked with Tate about compensation concerns.

Brown, Mevs, and Thomas also believed that some of the Respondent's practices were contrary to professional guidelines and they were concerned that those practices could put their own social work licenses at risk. For example, Brown and Thomas discussed that the Respondent was having individuals who were not at a therapy session complete treatment notes for that session and/or sign such notes. Brown and Thomas agreed that this was improper and that they should not complete treatment notes for therapy sessions they did not attend. Brown and Thomas discussed this with one another and with Mevs.

In addition, Mevs told Brown she was concerned that the Respondent was expecting her to have therapy sessions with children for whom she did not have consent forms from parents or guardians. In a similar vein, Brown was concerned that a non-therapist staff member was attending Brown's after-school therapy sessions even though the therapy subjects had not consented to the participation of that staffer or waived applicable privacy rights. Brown also believed she had observed some improperly rough handling of children in the afterschool program, and discussed this with Mevs who advised Brown to raise her concern with management. In an effort to help prepare for meetings with Carvana regarding work issues, the Charging Parties shared sections of the Code of Ethics of the National Association of Social Work. Tr. 151-152

The Charging Parties raised these common concerns with the Respondent, although in most instances they were not accompanied by co-workers when they did so. Brown and Thomas both approached Carvana to question whether they were being paid as agreed upon, but the evidence does not show that they went to the Respondent together about this. Similarly, Brown and Thomas both met individually with the

Respondent and raised the concerns they had discussed with one another about the rough treatment of children in the afterschool program.

On a number of occasions, however, the Charging Parties did raise their common concerns during supervisory meetings attended by one or more of the other Charging Parties. For example, as discussed above, all three Charging Parties were present when, during the October 24 orientation meeting with Pleasant, Mevs raised concerns that the Respondent was reducing the vacation benefit for the school-based therapists. When Mevs raised this concern, Thomas nodded in agreement. Likewise, Brown and Thomas were together during a meeting on December 13 during which Brown raised their common concerns regarding compensation and the rough treatment of children with Hepler, the contractor who was supervising their clinical work.[10]

Although the Charging Parties frequently had their work-related discussions outside the facility – especially after the Respondent warned them against engaging in such discussions – the record amply demonstrates that Carvana was aware that the Charging Parties' were discussing their work-related issues with co-workers. Carvana himself testified that he terminated the Charing Parties because "[i]t was clear to me that those three spent more time talking about what they weren't going to do as opposed to working collaboratively." He stated that a lot of the issues "they" had with the Respondent's work procedures were things "I didn't see anything wrong with." Tr. 696-697. The evidence shows that Carvana also knew that Brown had discussions with Tate about compensation.

Carvana made other statements showing that he was aware that employees were discussing work related concerns with co-workers. For example, according to Carvana's own account, at the October 25 meeting he told employees that "there had been a lot of water cooler talk" and that he disapproved because "issues never get addressed" that way and employees could talk to him if they had problems. During the November 26 meeting, Carvana responded to Mevs' unwillingness to do afterschool work by indicating that he was aware of coworker conversations about working conditions – asking Mevs "What's going on? Who have you been talking to?" In fact, Brown, Mevs, and Thomas discussed concerns regarding the afterschool work, and Brown and Thomas had raised those concerns with the Respondent. Pleasant was aware that Brown had discussed her pay concerns with Tate and that Brown "was quite about the office talking to many people about whatever it is she wanted to talk about." Tr. 578.

[10] Hepler responded to Brown that her job was to supervise the social workers' clinical hours, but that she did not want to discuss the "personal issues" that Brown was raising. The General Counsel has not alleged that Hepler was a supervisor or agent of the Respondent.

G. December 20 – Abandoned Training Session and Terminations of Brown, Mevs and Thomas

On December 20, 2019, the Respondent terminated all three Charging Parties. None of the three had previously received any documented discipline from the Respondent. Earlier on December 20, the Charging Parties attended a training that was focused on improving professionals' ability to connect with the people they were serving. The presenter, D'Lisa Worthy[11] was not an employee of the Respondent and provided the training at no charge. In addition to the three Charging Parties, the training was attended by two male therapists.[12]

Near the start of the training, Mevs asked Worthy whether the attendees would receive continuing education units for the training. Worthy said that they would not, and Mevs expressed her disappointment, stating that this was an example of the Respondent failing to keep its promises to employees. Subsequently Worthy raised an issue about the need for therapists to engage in "self-care" and both Thomas and Mevs made statements criticizing the Respondent as failing to support therapist self-care. Worthy cut these complaints off, saying "we're not here to talk about that." Worthy proceeded by asking the employees some open-ended questions. She testified that she asked one of the women attending the training a question, but the woman did not answer. One of the other women was "on her phone" and another woman was "kind of not giving eye contact." Worthy initiated a break because she concluded that the employees were not in the proper frame of mind for the training, something Worthy testified was not unusual when, as in this instance, a training session was on the day before the start of the Christmas holiday.

During the break in training, Worthy told Pleasant that she did not think the training was going well and suggested they "reschedule for a time that was not the day before Christmas." Pleasant arranged for Worthy to talk to Carvana. Worthy told Carvana the participants complained that the employer did not care about or support them and, while Worthy was happy the employees had had this forum to raise their concerns, she did not believe that going further with the training that day would be fruitful. Tr. 292-293. She characterized the behavior of some of the participants as

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[11] At trial I received a written statement that Worthy provided to the Board, see GC Exh. 36, over the Respondent's objection. Although I received this document, I do not give it any weight in arriving at my findings of fact. I note that the statement is not signed or dated by Worthy and that the email transmitting the statement makes reference to corrections that I am not sure were included in the version introduced. Tr. 615.

[12] I find that these five were the only employees who attended the training. Worthy testified that two additional women attended the training, for a total of 7 attendees, but her recollection in this regard is inconsistent with the testimony of the attendees and I do not credit it. In general, I did not find Worthy's recollection very reliable. She indicated that she based much of her testimony on how she generally conducted trainings, rather than on a specific memory of the day in question. See, e.g., Tr. 598.

"rude." Carvana and Pleasant reasonably understood her to be criticizing, in particular, the attitudes of at least two of the Charging Parties.[13] Carvana decided to cancel the training that day.

During the break in training, the Charging Parties went to lunch together outside the facility. When they returned Brown was told to meet Carvana in his office. When she did, Carvana told her that the Respondent was "moving in a new direction" and that she was being terminated effective that day. Carvana gave Brown a termination letter and a paycheck, then had her exit the facility. Shortly thereafter, Carvana met with Mevs. Carvana told Mevs that he was "just disappointed" in her and that she was terminated as of that day. Then Carvana met with Thomas. He told her that the "organization was going in a different direction" and this was her last day. He gave her a termination letter and escorted her out of the building. Each of the three termination letters states that the reason for the termination is that the Respondent is "moving in a different direction at this time in our service delivery."[14]

H. Respondent's Explanations for Terminating Brown, Mevs, and Thomas

On December 20, 2019, Carvana made the decision to terminate Brown, Mevs and Thomas effective immediately. His decision was not based on a disciplinary recommendation from anyone else within the organization. As discussed above, at the time he communicated the terminations the reason he gave to the Charging Parties, orally and in writing, was that the Respondent was "moving in a different direction." Carvana did not give any further explanation to the Charging Parties at that time, except for telling Mevs that he was "just disappointed" in her.

At trial, neither Carvana nor any other company official described a "different direction" that went further than simply getting rid of Brown, Mevs and Thomas. In its

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[13] Although I believe that Worthy did not know the Charging Parties' names at that time, it is also true that she identified the disengaged employees as women, and the Charging Parties were the only women in the training.

[14] The termination letters for the three Charging Parties were identical, except for the information identifying the particular employee being terminated. The body of each letter read:

> Your employment with CCMS is terminated effective today, December 20,2019. We are moving in a different direction at this time in our service delivery.
>
> Thank you for your service. We will mail your final check in two weeks, January 3rd, 2020.
>
> Please coordinate with Ms. Jackson to turn in all CCMS electronic equipment that you may have been assigned prior to receiving your final check if you are not turning the electronic equipment (i.e. CCMS company phone and tablet) in today.
>
> We wish you all the best in your future endeavours.

See GC Exhs. 13, 23, 25.

brief, the Respondent does not even mention the "different direction" explanation initially given to the Charging Parties regarding their terminations. Instead, Carvana testified that the reason he terminated them was that "[i]t was clear to me that those three spent more time talking about what they weren't going to do as opposed to working collaboratively," and that they had issues with employer practices he "didn't see anything wrong with." Tr. 696-697. He stated that "they didn't trust me . . . so why should I continue to use all the energy in a tug of war trying to convince them that they could trust the organization." Ibid., see also Tr. 581-583. He also stated that his decision was based on the view that "they did not contribute to a harmonious working environment," Tr. 285-286, and that Worthy's report about the training was the last straw, Tr. 289, 294.

Several times during his testimony, Carvana gave a different formulation of his reasons for terminating the Charging Parties. He stated that he did so out of concern that continuing to employ them would cause the Respondent to lose the grant for school-based therapy. When Carvana was questioned about why he concluded that the Charging Parties were putting that grant at risk, he referred in general terms to the Charging Parties' complaints about working conditions. He testified that "we would spend more time going back-and-forth over what their roles are and what they were supposed to do or what they're uncomfortable with, and more time just not trusting and working collaboratively, working together, and misinterpreting what people are saying. Oh, my goodness." Tr. 698. He stated that Brown had "bullied" him by telling him things that he "can't do," and that Mevs was "borderline disrespectful," Tr. 287-288. The Respondent has not asserted that any of the Charging Parties were insubordinate.[15]

There is scant record evidence to support Carvana's claim that any of the Charging Parties were endangering receipt of the school-based grant. With respect to Brown, I see nothing at all to support that claim. To the contrary, Brown testified that she "absolutely loved" the school-based work, that the team at the school was "great" and that she "was very much supported" there. There was no record evidence that the school where Brown was embedded was unhappy with her work or that her own assessment of how well things were going there was unjustifiably rosy.

Regarding Mevs, Carvana indicated that that a lack of productivity at her schools played into his decision. However, Carvana conceded that Mevs did not control how many hours she worked, and that it was Pleasant who made the assignments of school-based work to Mevs. Tr. 325-326, 328. Carvana also conceded that Mevs had never refused to provide services to a student assigned by the Respondent and that Mevs lacked authority to assign new students to herself. Ibid. Mevs, who was terminated less than 3 months after beginning work, credibly testified that increasing her caseload was a slow process because when a teacher believed that another student needed

[15] At one point, Carvana told Brown that if she refused to run a weekly CIOP group at the Largo facility he would consider it insubordination. Tr. 253, 437. Brown did not refuse, but continued to perform this work. Tr. 319 and 336-337.

services, Mevs could not immediately begin providing services to that student. Instead, Mevs had to wait for the school system to make the referral to the Respondent and for the Respondent to then make the assignment to her. Tr. 126-127, 571. Another factor that slowed increases in caseload was that the Respondent lacked the required parental consent forms for some of the children. Tr. 87-89.[16] Pleasant had discussions with Mevs in which Pleasant recognized that workflow would be irregular at the start – stating that some children initially assigned to Mevs would turn out to have left the school or to no longer require services. Tr. 123-125. That turned out to be the case. Ibid. The record shows that Carvana, just a day before discharging Mevs, had accompanied her to a newly assigned school, introduced her to officials at that school, and told the principal that Mevs would be a "great fit." Tr. 172, 285.

Thomas was the only one among the Charging Parties about whom the record shows that the Respondent received complaints from personnel at the schools in the school-based program. Pleasant said that, while Thomas "tried to produce quality work," the school "ended up having a lot of complaints about her." Thomas credibly testified that the issue was that school officials were asking her to provide services that she was not permitted to perform in her role as a therapist, and which she was not trained for – such as assisting children with toileting and meals. She said that teachers did not like that she declined to do these tasks.[17]

With respect to Thomas' termination, Carvana gave an additional explanation that does not relate to Brown and Mevs. Specifically, Carvana asserted that he did not have any "spot" for Thomas since "the schools told me they didn't want her back." Tr.

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[16] During the first month of Mevs' employment the school-based hours she was reporting were very low, and Carvana suggested that he could use her to perform intake work. Tr. 128, 324. Mevs indicated that intake was not part of the job she was hired for and stated that she "wasn't interested in doing any intakes." Ibid. In addition, Carvana testified that he approached Mevs to do some of the CIOP work, but that he agreed to postpone that work until Mevs became better acquainted with her school-based duties. Tr. 322. The Respondent does not discuss either of these incidents in its brief, or otherwise suggest that Mevs refused a direction from the Respondent to perform the work.

[17] Pleasant claimed that the school eventually made a Maryland CPS (child protective services) complaint against Thomas, Tr. 645, and Carvana told Thomas that the school had reported that she hit a child, Tr. 523. At trial, however, a Maryland State official credibly rebutted these suggestions. That official testified that Maryland CPS had no record involving Thomas. Tr. 632. In addition, Thomas gave uncontroverted testimony that despite Carvana advising her that she was being accused of such misconduct, she was never investigated, or even contacted, by CPS or any other outside entity about the allegation and that she told Carvana there had been no incident of that type. Tr. 533. Indeed, Carvana eventually told Thomas that there was no substance to the allegation. Ibid. The Respondent had no written records or communications documenting an allegation against Thomas. Tr.49-50. In its brief, the Respondent makes no mention of Pleasant's or Carvana's statements about this matter and does not contend that Thomas' termination was justified by any purported mistreatment of a student.

312. However, while it is true that Thomas was not working out at the school to which she was initially assigned, the Respondent did not introduce any evidence that officials of other schools did not want Thomas providing services to them. To the contrary, Carvana testified that he *could* have had Thomas work at other schools. Tr. 313. The Respondent did, in fact, reassign Thomas away from the school where the problems arose and to other schools that had previously been Mevs' responsibility. Tr. 528-529. Although Thomas expressed misgivings to the Respondent about this new assignment because Mevs had been treating particularly challenging children, Thomas accepted the assignment, Tr. 532, and the Respondent did not claim that it received complaints about Thomas from those other schools.

The Respondent maintains a 28-page employee handbook. GC Exh. 2. That handbook contains, inter alia, standards of conduct, rules on safety and workplace violence, and a progressive discipline procedure. The Respondent has not pointed to any section of the handbook which it claims the Charging Parties violated. The handbook contains a progressive discipline policy stating:

> [The Respondent W]ill normally take [disciplinary] steps in the following order: A first offense may call for a verbal warning; The next offense may be followed by a written warning; Another offense may lead to a suspension; and, Repeated offenses may lead to termination of employment.[18]

GC Exh. 2, Pages 26-27. The Respondent did not follow the steps in its progressive discipline policy prior to terminating Brown, Mevs, and Thomas. To the contrary, although Carvana testified that he had talked to the Charging Parties about their conduct, he conceded that there was no documented discipline against any of them prior to their discharges. Tr. 38-39.

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[18] The handbook does list 19 particularly serious violations that might lead to "termination upon the first offense," but none of those are cited by the Respondent as a reason for its action here and none are facially relevant. Those offenses are: theft of company property or personal property of another employee; punching another employee's time card or permitting someone to punch your time card; falsification of an application or company record; sleeping while on duty; unauthorized disclosure of confidential information; serious violation of harassment policy; fighting, threatening, or attempting bodily injury to another person on the company property; deliberately damaging company property, property belonging to a co-worker or to a vendor; failure to wear safety equipment where required; unauthorized use of company time, materials, tools, etc. for personal gain; unauthorized alteration of company machinery or equipment; violation of safety rules which could result in serious injury to self or others; reporting to work under the influence of drugs and/or alcohol; possession of guns, knives, weapons, explosives, etc. on company property; testing positive for drugs on a company-administered drug test; refusal to cooperate with the investigation of a work-related matter; insubordination; indecent or immoral behavior on company property; conviction of a felony. GC Exh. 2, Page 22.

I. JOHNNIE'S POULTRY ALLEGATION

During the trial, I granted the General Counsel's motion to amend the complaint to add the following allegation: "On or about January 1, 2021, Respondent, by its unnamed agent interrogated employees about protected concerted activity and the subject of this National Labor Relations Board unfair labor practice proceeding without providing those employees with the proper *Johnnie's Poultry*, 146 NLRB 770 (1964) [enf. denied 344 F.2d 617 (8th Cir. 1965)] safeguards." The General Counsel has identified Michael Holmes – the Respondent's lead trial counsel – as the "unnamed agent" referenced in the amended complaint and Ashely Tate as the interrogated employee. Under the decision in *Johnnie's Poultry*, when an employer's attorney interviews an employee about protected activity in preparation for an unfair labor practice hearing, the attorney must communicate to the employees the purpose of the questioning, assure the employees that no reprisal will be taken against them, and obtain the employees' participation on a voluntary basis. See *Albertson's, LLC*, 359 NLRB 1341, 1342–1344 (2013), reaffd. 361 NLRB No. 71, slip op. at 1 n. 2 (2014), applying *Johnnie's Poultry Co*., supra.

The General Counsel elicited testimony from Tate that, while Holmes had informed her that appearance as a witness was optional, she did not "recall" Holmes giving her "assurances that there would be no reprisals against [her], meaning nothing would happen and [she] could speak freely" at the trial. Tr. 665. After the General Counsel amended the complaint to add the *Johnnie's Poultry* allegation, Attorney Holmes was placed under oath and testified that when he contacted the Respondent's employees about testifying he "absolutely" told each of them who he was, who he was calling on behalf of, and why he was calling, and further told them that they did not have to speak with him and that if they did speak with him nothing would happen regarding their "employment, pay or anything else," as a result, and that "there will be no reprisal" and "there will be no benefit." Tr. 702-704. I found attorney Holmes a very reliable witness on this subject based on his unequivocal testimony, demeanor, and conduct throughout the hearing. I credit his testimony regarding the assurances he provided to Tate. Although I believe that Tate was testifying to the best of her ability on this subject, I found her testimony that she did not recall certain statements to be less certain and reliable than Holmes' testimony that he "absolutely" made those statements. Tate did not state that she specifically recalled *not* receiving the assurances that Holmes said he provided, nor do I believe that Tate's testimony established that she precisely recollected all the preliminary representations made to her by Holmes. I saw nothing in Tate's demeanor to suggest that she was apprehensive about testifying forthrightly.

For the reasons stated above, the factual basis for the alleged *Johnnie's Poultry* violation was not established. Therefore, that allegation must be dismissed.

ANALYSIS AND DISCUSSION

I. October 24 Allegation: Threat by Pleasant

The General Counsel alleges that the Respondent made a threat in violation of Section 8(a)(1) of the Act on October 24 when, during an orientation meeting attended by the Charging Parties and other new employees, Pleasant responded to Mevs' question about a perceived reduction in employee vacation time for the school-based therapists by stating "Well, if you want Natalie, you can have all your days off," and then making a similar statement once or twice more. Section 8(a)(1) makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of" their rights to engage in protected union and concerted activity. In deciding whether an employer has made a threat in violation of this prohibition, the Board applies the objective standard of whether the remark would reasonably tend to interfere with the free exercise of employee NLRA rights, and does not look at the motivation behind the remark, or rely on the success or failure of such coercion. *Midwest Terminals of Toledo*, 365 NLRB No. 158, slip op. at 21 (2017), enfd. 783 Fed.Appx. 1 (D.C. Cir. 2019); *Divi Carina Bay Resort,* 356 NLRB 316, 320 (2010), enfd. 451 Fed. Appx. 143 (3d Cir. 2011); *Joy Recovery Technology Corp.,* 320 NLRB 356, 365 (1995), enfd. 134 F.3d 1307 (7th Cir. 1998); *Miami Systems Corp.,* 320 NLRB 71, 71 fn. 4 (1995), affd. in relevant part 111 F.3d 1284 (6th Cir. 1997). When applying this standard, the Board considers the totality of the relevant circumstances. *Mediplex of Danbury,* 314 NLRB 470, 471 (1994).

I find that Pleasant unlawfully threatened Mevs at the October 24 meeting. Pleasant made the relevant statements in direct response to Mevs' protected protest regarding the Respondent's interpretation of the vacation benefit for school-based therapists. See *David Saxe Productions*, 364 NLRB No. 100, slip op. at 3 (2016) (employer unlawfully threatened employees when it made the statement in direct response to their protected activity, including complaints about holiday benefit); *Sherwood Ford, Inc.*, 264 NLRB 863 870 (1982) (employee complaints about holiday pay is protected activity), enfd. 710 F.2d 500 (8th Cir. 1983). Mevs and Brown testified that when Pleasant responded by telling Mevs that she could have "all" her "days off," they understood her to be threatening Mevs' continued employment. I agree that the most reasonable way to understand Pleasant's statement is as either a threat to discharge Mevs, or a suggestion that Mevs should quit if she was dissatisfied with her working conditions. See *South Jersey Sanitation Corporation*, 357 NLRB 1446, 1451 (2011) (employer violates the Act by responding to an employee complaint about working conditions by telling the employee he should quit or be fired if he does not like the way the employer runs things). Indeed, Pleasant did not testify to a different meaning, nor to any basis for believing that reasonable employees would interpret what she said in some benign way. In reaching this conclusion I considered the testimony that Pleasant made the statement in a joking tone of voice, but that does not blunt the coercive nature of the statement in this instance. See *FDRLST Media*, 370 NLRB No. 49, slip op. at 5 (2020), citing *Champion Road Machinery*, 264 NLRB 927 (1982) (finding that a supervisor's statement was an unlawful threat even though the

employees felt the statement was a joke). Indeed, in my view the fact that the Respondent in this case would show such blithe disregard for the livelihood of an employee, and the services the employee was providing, makes the comment even more threatening because it communicates that the Respondent sees the employee as vulnerable and expendable.

For the reasons discussed above, I find that on October 24, 2019, the Respondent, by Pleasant, violated Section 8(a)(1) by threatening an employee with loss of employment for engaging in protected concerted activity.

II. October 25 Allegations: Promulgation of Unlawful Rules; Threats Regarding Unlawful Rules; Impression of Surveillance

A. During an all-staff meeting at the facility on October 25, Carvana told employees that if they had any work-related problems they were to bring them directly to him, that he had "zero tolerance" for employees discussing these problems with co-workers, and if employees were found to be engaging in such conversations he would "do what I have to do." The General Counsel alleges that Carvana's statements constituted the promulgation of work rule that violated Section 8(a)(1). I find that the General Counsel established this violation. The prohibition on discussions with co-workers was generally applicable and was announced by the Respondent's President and CEO to everyone assembled at an all-staff meeting. The stated prohibition on co-worker discussions is broad and extends to NLRA-protected discussions regarding wages and other terms and conditions of employment. In its decision in *The Boeing Company*, the Board explicitly designated a rule of this type, which prohibits "employees from discussing wages or benefits with one another," as an example of an unlawful "Category 3" rule. 365 NLRB No. 154, slip op. at 4 (2017); see also *Motor City Pawn Brokers*, 369 NLRB No. 132, slip op. at 4-5 (2020) (applying *Boeing* and stating that "employees have a Section 7 right to discuss among themselves, and with the public, information about their terms and conditions of employment for the purpose of mutual aid and protection.").

For the reasons discussed above, I find that the Respondent violated Section 8(a)(1) on October 25, 2021, by orally promulgating a work rule that unlawfully prohibited employees from engaging in discussions protected by the Act.[19]

B. The complaint alleges that, at the October 25 meeting, Carvana unlawfully threatened employees with unspecified reprisals if they violated the rule against

[19] The General Counsel also alleges that during the October 25 meeting Carvana promulgated a rule prohibiting employees from speaking derogatorily about the Respondent. As discussed in the Statement of Facts, I find that the record does not establish that Carvana made the statement prohibiting employees from "badmouthing" or speaking "derogatorily," which the General Counsel relies on as the factual basis for this allegation. Therefore, that element of the allegation must be dismissed.

discussing their work-related concerns with co-workers. As set forth above, an allegation that a coercive threat was made in violation of Section 8(a)(1) is analyzed using an objective standard and with consideration of the totality of the relevant circumstances. *Midwest Terminals of Toledo*, supra, *Divi Carina Bay Resort,* supra, *Joy Recovery Technology Corp.,* supra; *Miami Systems Corp.,* supra; *Mediplex of Danbury,* supra. I conclude, based on the totality of the relevant circumstances, that the record establishes this violation. The statements at-issue were made by Carvana – the highest official of the Respondent and the official with authority to discipline and fire employees. The warning that employees must follow the unlawful rule prohibiting protected conversations was put in particularly stark terms. Carvana did not merely warn employees against such conversations, but told them he had "zero tolerance," for such activity and that he would "do what [he] ha[d] to do" in response to it. The "zero tolerance" language suggests an intention to respond harshly and without consideration of mitigating factors or second chances. Certainly when combined with Carvana's statement that he had "eyes" and "ears" everywhere, the threat would lead a reasonable employee to understand that Carvana was stating that those who discussed work-related problems would be found out and discharged or subjected to other harsh discipline. The Respondent has not forwarded a basis for believing that reasonable employees would interpret this statement as more benign than that.

The Respondent violated Section 8(a)(1) of the Act on October 25, 2019, when Carvana threatened employees with unspecified reprisals if they violated the Respondent's rule against employees discussing their work-related concerns with co-workers.

C. The third allegation arising out of the October 25 meeting is that the Respondent violated Section 8(a)(1) of the Act by creating the impression that employees' protected concerted activities were under surveillance. The Board's test for determining whether an employer has created an impression of surveillance is whether an employee would reasonably assume from the statement in question that his or her protected activities had been placed under surveillance. *Fred'k Wallace & Son, Inc.*, 331 NLRB 914, 914 (2000); *Tres Estrellas de Oro*, 329 NLRB 50, 50 (1999). The credible evidence that Carvana told employees at the October 25 staff meeting that he would know if they talked about work issues among themselves because he had "eyes" and/or "ears" at the facility establishes this violation. This is an express statement that Carvana is placing protected activity under surveillance and a representation that he has the capability to do so.

The Respondent violated Section 8(a)(1) of the Act on October 25, 2019, when Carvana created the impression that employees' protected concerted activities were under surveillance.

III. November 5 Allegations: Interrogation; Prohibiting Discussions; Threatening Unspecified Reprisals

A. On November 5, 2019, after Tate informed the Respondent that Brown had raised issues with her regarding compensation, the Respondent summoned Brown to Pleasant's office. The General Counsel alleges that during the ensuing discussions, the Respondent violated Section 8(a)(1) by, inter alia, coercively interrogating Brown regarding her protected concerted activities. An interrogation violates Section 8(a)(1) when, "under all the circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act."[20] *Westwood Health Care Center*, 330 NLRB 935, 940 (2000). Factors the Board has recognized as bearing on the question of whether an interrogation unlawfully interferes, restrains, or coerces employees' protected concerted activities include: "(1) The background, i.e. is there a history of employer hostility and discrimination? (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees? (3) The identity of the questioner, i.e. how high was he in the company hierarchy? (4) Place and method of interrogation, e.g. was employee called from work to the boss's office? Was there an atmosphere of unnatural formality? (5) Truthfulness of the reply." *Westwood Health Care Center*, 330 NLRB at 939

Based on the totality of the circumstances I find that the November 5 questioning of Brown about her conversation with Tate regarding compensation issues would tend to coerce Brown in the exercise of the NLRA right to engage in protected concerted activity. At the time of the interrogation, Carvana, the highest ranking official of the Respondent, had already warned Brown and other staff that he had "zero tolerance" for co-worker discussions about problems with working conditions and would "do what" he "had to do" regarding employees who engaged in such activities. He continued to display his hostility towards this activity during the November 5 meeting, characterizing Brown's protected activity as her being "nasty and unprofessional." The intimidation was heightened by the fact that Brown was summoned into Pleasant's office and upon entering found herself outnumbered by high level officials Carvana and Pleasant. Brown's response suggests a level of discomfort, in that she tried to minimize the conversation that day with Tate by saying it had been about "friendly things." That only caused Carvana to turn up the heat, telling Brown that she could not have been discussing friendly things because Brown and Tate were not friends, and then revealing that he already knew that Brown had complained to Tate about her compensation. The

[20] Section 7 of the NLRA provides in relevant part that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

substance of the exchange indicates that the Respondent was not trying to find out more about Brown's concerns, but rather was using the interrogation to pressure Brown to stop having discussions with co-workers about those concerns. Based on consideration of the relevant factors, the interrogation was unlawfully coercive.

The Respondent violated Section 8(a)(1) of the Act on November 5, 2019, when Carvana coercively interrogated Brown about her protected concerted activities.

B. The General Counsel alleges that during the November 5 meeting, the Respondent violated Section 8(a)(1) of the Act by unlawfully instructing Brown not to speak negatively about the Respondent, including by complaining to co-workers about her pay. During that meeting, the Respondent confronted Brown over the fact that she had raised issues regarding compensation to a co-worker. Carvana characterized this as Brown being "nasty and unprofessional," and Pleasant stated that if she heard "anything more about you talking negatively about the company, then I'm going to have to do what I got to do." I find that the Respondent violated Section 8(a)(1) as alleged. "[D]iscussing terms and conditions of employment with coworkers lies at the heart of protected Section 7 Activity." *Union Tank Car Co.*, 369 NLRB No. 120 slip op. at 2 (2020), quoting *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 3025 (2007), enfd. 519 F.3d 373 (7th Cir. 2008); see also *Motor City Pawn Brokers*, 369 NLRB No. 132, slip op. at 6 (2020) ("[E]mployees have a right to discuss among themselves, and with the public, information about their terms and conditions of employment for the purpose of mutual aid and protection."). The Board has stated that prohibiting employees from discussing their work-related complaints with other employees significantly restricts employees' Section 7 rights,[21] and that "no justification outweighs this significant impairment." *Union Tank Car Co.*, supra.[22]

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[21] In its brief, the Respondent argues, without citation to any authority, that the Charging Parties work-related complaints were not protected under the Act because the Charging Parties never came to the Respondent "as a group" to discuss them. Brief of Respondent at Page 29. That argument is without merit. As made clear by *Union Tank*, employee discussions among themselves regarding work-related concerns is protected activity without regard to whether those discussions result in the employees bringing the concerns to the Respondent at all – singly or as a group. Moreover, as is recounted in the Factual Findings, the Charging Parties' issues regarding compensation, training, and employer practices were of shared concern to them, and in some instances actively sought – for example, when Thomas asked Brown for help getting compensated for the afterschool work.

[22] In *Union Tank* the Board distinguishes such an instruction from one limited to prohibiting statements that disparage the company to customers or other non-employees, or limited to statements that do not "abide by basic standards of civility." Slip op. at 2-3. The challenged prohibition here was not limited either to communications outside the workforce or to statements that were uncivil.

I find that the Respondent violated Section 8(a)(1) of the Act on November 5, 2019, by instructing Brown not to engage in protected concerted activity by complaining to other employees about the adequacy of compensation or otherwise speaking negatively about the Respondent.

C. The General Counsel alleges that on November 5, 2019, the Respondent unlawfully threatened Brown with unspecified reprisals if she spoke negatively about the Respondent to other employees. On November 5, 2019, the Respondent criticized Brown for discussing dissatisfaction over her compensation with a co-worker and then Pleasant stated that "if I hear anything more about you talking negatively about the company, then I'm going to have to do what I got to do." As with the similar statement that Carvana made during the October 25 staff meeting, I find that this was a threat in violation of the Act. As previously noted, the Board considers the totality of the circumstances when determining whether a statement would reasonably tend to interfere with the free exercise of employees' NLRA rights and therefore violates the Act. *Midwest Terminals of Toledo*, supra, *Divi Carina Bay Resort,* supra, *Joy Recovery Technology Corp.,* supra; *Miami Systems Corp.,* supra; *Mediplex of Danbury,* supra. In this instance, Brown was summoned to Pleasant's office where she was confronted by Carvana and Pleasant. Carvana began by accusing Brown of being "nasty and unprofessional," and then revealed that he had prior intelligence about Brown's conversation with Tate regarding compensation. Pleasant expressly linked the threat to "do what we got to do" to any future such conversations with co-workers. Although Pleasant did not have the authority to terminate employees, the record does not show that Brown was aware of this and, at any rate, Pleasant made the threat in the presence of Carvana who did have such authority and who did not claim to have contradicted Pleasant's threat. This would reasonably tend to interfere with an employee's free exercise of or his or her NLRA right to discuss compensation and other terms and conditions of employment with co-workers.

I find that the Respondent violated Section 8(a)(1) of the Act on November 5, 2019, by threatening Brown with unspecified reprisals if she spoke negatively about the Respondent to other employees.

IV. November 26, 2019: Carvana Questions Mevs

The General Counsel alleges that Carvana unlawfully interrogated Mevs during a meeting on November 26. A violation of Section 8(a)(1) of the Act is established when the evidence shows that the employer has questioned an employee in a way that "would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act." *Medcare Associates, Inc.*, 330 NLRB at 940

The evidence shows that, during the November 26 meeting, Carvana met with Mevs in his office about workload. During the meeting, Mevs stated that she was unwilling to perform work in the afterschool enrichment program or other programs after

her normal tour of duty. Mevs made this statement in part because of the concerns Brown and others had alerted her to regarding the way the Respondent was running those programs and compensating the school-based therapists who worked in them. In response to Mevs' statement, Carvana asked her "Where is this coming from? Who have you been talking to?" Carvana was unsatisfied with this exchange and shortly after the meeting ended, he summoned Mevs back to his office and again interrogated her on the subject. He asked: "What's going on? Who have you been talking to?" Rather than divulge her conversations with co-workers, Mevs told Carvana that she had not been talking to anybody.

I find that this interrogation was a violation of the Act. The questioning was carried out by Carvana, the highest ranking official at the Respondent and the person who had authority over terminating and disciplining employees. See *Westwood Health Care Center*, 330 NLRB at 939 (fact that questioner was high in the company hierarchy weighs in favor of violation). Mevs was alone in Carvana's office when he questioned her and, unsatisfied with her answers, he summoned her back to his office for a second round of prodding. Ibid. (fact that employee was called to the boss's office weighs in favor of violation). In response to the interrogation, Mevs refrained from exposing that Brown had complained to her about the after hours work and this indicates that Mevs was concerned that adverse consequences could result from divulging her conversations with Brown. Ibid. (truthfulness of response a factor in determining whether an interrogation was unlawfully coercive). At the time of the questioning, Mevs had recently attended the meeting during which Carvana revealed his animus towards such discussions with coworkers by threatening that he had "zero tolerance" for them. Ibid. (history of employer hostility to protected concerted activity and fact that employer appears to be seeking information on which to base action are both factors that weigh in favor of finding an unlawfully coercive interrogation). All these relevant factors weigh in favor of finding the interrogation unlawful. There are no substantial countervailing factors, much less any that shift the balance away from a violation.

On November 26, 2019, the Respondent, by Carvana, coercively interrogated Mevs regarding her protected concerted activity in violation of Section 8(a)(1) of the Act.[23]

V. Termination of Brown, Mevs, and Thomas

The General Counsel alleges that the Respondent violated Section 8(a)(1) of the Act on December 20, 2019, by discriminatorily discharging Brown, Mevs, and Thomas because of their protected concerted activities. In such cases the General Counsel,

[23] The complaint, at Paragraphs 6(d) and (e), alleges that Carvana and Pleasant unlawfully interrogated an employee in "Early December 2019." For the reasons discussed in the Findings of Fact, I find that the evidence is insufficient to establish that the alleged early December interrogation, or interrogations, occurred.

under the *Wright Line* decision, bears the initial burden of showing that the Respondent's decision to take adverse action against an employee was motivated, at least in part, by activities protected by the Act. 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983) (Section 8(a)(3) and (1)); see also *American Red Cross Missouri-Illinois Blood Services Region*, 347 NLRB 347, 349 (2006) ("The Board applies the *Wright Line* framework to alleged violations of Section 8(a)(1) that turn on employer motivation."). The General Counsel may meet its initial *Wright Line* burden by showing that: (1) the employee engaged in union or other protected activity, (2) the employer knew of such activities, and (3) the employer harbored animosity towards the union or other protected activity, and there was a causal connection between the discipline and the protected activity. *General Motors LLC*, 369 NLRB No. 127, slip op. at 10 (2020); *Camaco Lorain Mfg. Plant,* 356 NLRB 1182, 1184-1185 (2011); *ADB Utility Contractors,* 353 NLRB 166, 166-167 (2008), enf. denied on other grounds, 383 Fed. Appx. 594 (8th Cir. 2010); *Intermet Stevensville,* 350 NLRB 1270, 1274-1275 (2007); *Senior Citizens Coordinating Council,* 330 NLRB 1100, 1105 (2000). If the General Counsel establishes discriminatory motive, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected activity. *General Motors*, supra; *Camaco Lorain*, supra; *ADB Utility*, supra*; Intermet Stevensville*, supra; *Senior Citizens*, supra.

The General Counsel easily satisfies the initial *Wright Line* burden. As discussed above, Brown, Mevs, and Thomas engaged in protected concerted activity by discussing with coworkers their concerns that the Respondent was not providing agreed-upon compensation for work performed after the employees' regular tour of duty. Some of these conversations expressly looked towards ways to work together to remedy this, with Thomas asking Brown to "help her get help in getting paid." Brown also discussed her concern about compensation with Tate, another employee. In addition, Brown, Mevs, and Thomas discussed their concerns about the lack of promised training, and Mevs raised this during the December 20 training that all three attended immediately before their terminations. The three Charging Parties also had discussions with one another regarding their concerns that the Respondent's practices were inconsistent with professional guidelines and put their social work licenses at risk. These types of employee discussions of "terms and conditions of employment with coworkers lies at the heart of protected Section 7 Activity" and is protected by the Act. *Union Tank Car Co.*, supra.

The second and third elements of the General Counsel's initial burden have also been proven. There is a wealth of evidence showing both that Carvana was aware that the Charging Parties were discussing their working conditions, that he was hostile towards such discussions, and that his hostility was connected to the discharge decision. The most conspicuous evidence of this (but far from the only evidence) is Carvana's own testimony on the subject. Carvana testified that he terminated the

Charging Parties because "[i]t was clear to me that those three spent more time talking about what they weren't going to do as opposed to working collaboratively." Carvana explained at trial that he disapproved of such discussions because "water cooler talk" had been "running rampant," affecting "morale," and that employees discussing their work-related issues "never" results in the issues "get[ting] addressed." In Brown's case, Carvana was specifically aware of the conversation that Brown had with Tate about compensation issues, and Carvana expressed his hostility by characterizing the communication as "nasty and unprofessional." The Respondent's hostility towards employees' protected discussions about working conditions is further demonstrated by the violations found above, which show that the Respondent promulgated rules, made threats, and interrogated employees in an effort to chill such employee activities.

Since the General Counsel has established all three elements of the initial *Wright Line* burden, the burden shifts to the Respondent to show that it would have discharged the Charging Parties absent their protected activity. *General Motors*, supra; *Camaco Lorain,* supra; *ADB Utility*, supra; *Intermet Stevensville*, supra; *Senior Citizens*, supra. Although the Charging Parties were all relatively recent hires, I find that the record overwhelmingly shows that the Respondent has not met its responsive burden. Carvana, who was solely responsible for making the termination decisions, testified that the reason he discharged the Charging Parties was because they "didn't trust" him, complained about employer practices he "didn't see anything wrong with," and "spent more time talking about what they weren't going to do as opposed to working collaboratively." The problem the Respondent has is that rather than constituting a reason for terminating the Charging Parties even absent their protected activity, Carvana's explanation reaffirms that the reason for the terminations *was the protected activity.* Carvana cannot, simply by characterizing the Charging Parties' protected activity in negative terms, transform that protected activity into a nondiscriminatory basis for discharging them. Federal protection for concerted activity is valuable precisely so that employees may work together to seek changes to conditions that their employer thinks there is nothing "wrong with." Employees are protected when they talk with other employees about pay discrepancies or improper practices, or bring common concerns to their employer, because they have a right not to simply "trust" the employer's representations that their pay is correct and that there is nothing "wrong" with working conditions. Of course, this can be an annoyance for managers, as Carvana made clear it was for him. But there would be no need to provide employees' concerted activity with the protection of federal law if it was not the case that such activity sometimes annoys managers.

In reaching the conclusion that Carvana's negative characterization of the employees' protected activities does not meet the employer's responsive burden, I considered whether a different result was indicated by the Board's decision last year in *General Motors*, supra. There the Board stated that when an employee engages in abusive conduct in the course of protected activity, that abusive conduct should be

differentiated from the protected conduct for purposes of the *Wright Line* analysis – meaning that an employer can escape a finding of violation if its shows that the employee engaged in an abusive outburst that would have led to the same discipline even absent the accompanying protected activity. *General Motors*, slip op. at 8. Consideration of the *General Motors* decision does lead to a different conclusion here because, while it is clear that Carvana was personally offended by the Charging Parties discussing and questioning his decisions, none of the Charging Parties engaged in anything that remotely qualifies as "abusive conduct." The type of conduct that the Board identified in *General Motors* as abusive was a "profane ad hominem attack or racial slur." Slip op. at 7.[24] The Charging Parties did not engage in such abusive conduct during either their discussions with co-workers, or their interactions with managers and supervisors, or the training session on December 20.[25]

Carvana also testified to a related explanation for why he terminated the charging parties – i.e., that by continuing to employ them, the Respondent would risk losing the school-based therapy grant. The record does not establish that this was a sincere concern that would have led to the termination decision absent the Charging Parties' protected activity. Carvana did not attempt to support this concern by showing that any official of the entity making the grant had expressed dissatisfaction with the Respondent's services or the work of any of the three Charging Parties. The Respondent did not provide meaningful evidence about the process by which the granting entity would determine whether the grant was continued or renewed, nor specifically how the Charging Parties would negatively influence that process. Indeed, in Brown's case the unrebutted evidence was that Brown loved her school-based work and that the team at the school where she was assigned "very much supported" her. With respect to Mevs, although Carvana suggested that Mevs' school-based performance was lacking because she was not reporting enough hours, the record showed that increasing Mevs' workload was not within her own power, but primarily up to the Respondent itself. Mevs never declined to treat any student that the Respondent

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[24] The concrete examples discussed by the Board were cases where employees engaged in abusive conduct by "unleas[ing] a barrage of profane ad hominem attacks against the owner of an employer"; "post[ing] on social media a profane ad hominem attack against a manager"; "shout[ing] racial slurs while picketing," and "stepping toward the supervisor , shaking her finger within striking distance and continuously screaming, 'I can say anything I want,' 'I can swear if I want,' . . . 'I can do anything I want.'" Slip op. at 1 and 7.

[25] What Worthy told Carvana about the December 20 training was that women in attendance had said that the employer did not care about, or support them, and that the women then ceased to actively participate. Even assuming that the Respondent had a reasonable belief that the Charging Parties engaged in this conduct, that would not be a defense since a failure to actively participate in training does not approach being an abusive outburst within the meaning of *General Motors*. Moreover, Carvana's testimony, even if fully credited on this point, was that the Charging Parties' behavior during the training was the last straw – meaning that this behavior would not have resulted in the terminations absent the prior "straws." Tr. 289, 294.

assigned to her in the school-based program. The idea that Mevs' performance in the school-based program was a reason for her termination is belied by the fact that just a day before her termination, Carvana went to a new school with Mevs and introduced her to the principal there as a "great fit."

With respect to Thomas, the record does provide support for finding problems in her school-based work. Teachers at the school to which Thomas was initially assigned were dissatisfied with her performance because she declined their requests to provide non-therapy services – for example, assistance with toileting and meals. Thomas testified that this non-therapy work was not part of her assignment and that she did not have the requisite training to provide those types of assistance. According to Carvana the problems at this school meant he had to terminate Thomas because she could not go back to that school and he did not have another "spot" for her. This justification is pretextual. Carvana's claim that he had no "spot" for Thomas is rebutted by his own testimony that he could, and in fact *did*, assign Thomas to "spots" at other schools. I note, moreover, that neither Carvana, nor anyone else, testified that Thomas should have provided, or was even permitted to provide, the non-therapy services that had become a point of contention at the school to which she was initially assigned. Lastly, the notion that absent her protected activity the Respondent would have terminated Thomas based on the teacher criticism is further undermined by the fact that the Respondent did not terminate her when those criticisms arose, but rather terminated her later, and at the same time as Brown and Mevs, even though the Respondent makes no claim that it received teacher criticism about them.

Lastly, I note that the Respondent imposed the ultimate employment penalty of discharge on the three Charging Parties even though there was no documented prior discipline against any of them. This is contrary to the Respondent's own progressive discipline policy, under which the Respondent generally issues a verbal warning for a first offense, a written warning for a second offense, a suspension for a third offense, and only terminates employees if there are offenses subsequent to that. The Respondent's failure to follow the steps in its own progressive discipline policy before terminating the Charging Parties provides further evidence that the Respondent's proffered non-discriminatory explanation was pretextual, and further undermines its effort to meet its responsive burden. *Wismettac Asian Foods,* 370 NLRB No. 35, slip op. at 24-25 (2020); *Keller Mfg. Co*., 237 NLRB 712, 713-714 (1978).

I find that the Respondent discriminated in violation of Section 8(a)(1) of the Act on December 20, 2019, when it terminated Brown, Mevs, and Thomas because they engaged in protected concerted activity.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Respondent violated Section 8(a)(1) of the Act on October 24, 2019, by threatening an employee with loss of employment for engaging in protected concerted activity.

3. The Respondent violated Section 8(a)(1) of the Act on October 25, 2019, by: orally promulgating a work rule that unlawfully prohibited employees from engaging in discussions protected by the Act; threatening employees with unspecified reprisals if they violated that unlawful work rule; creating the impression that employees' protected concerted activities were under surveillance.

4. The Respondent violated Section 8(a)(1) of the Act on November 5, 2019 by: coercively interrogating Brown about her protected concerted activities; instructing Brown not to engage in protected concerted activity by complaining to other employees about the adequacy of compensation or otherwise speaking negatively about the Respondent; and threatening Brown with unspecified reprisals if she spoke negatively about the Respondent to other employees.

5. The Respondent violated Section 8(a)(1) of the Act on November 26, 2019, by coercively interrogating Mevs regarding her protected concerted activity.

6. The Respondent discriminated in violation of Section 8(a)(1) of the Act on December 20, 2019, when it terminated Brown, Mevs, and Thomas because they engaged in concerted protected activity.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, having found that the Respondent violated Section 8(a)(1) by discharging Denise Brown, Natalie Mevs, and Lynda Thomas for engaging in protected concerted activity, I shall order the Respondent to offer them full reinstatement to their former jobs or, if the jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. I also shall order that the Respondent make Brown, Mevs, and Thomas whole, with interest, for any loss of earnings and other benefits that they may have suffered as a result of the unlawful discharges. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with

the decision in *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), I shall also order the Respondent to compensate Brown, Mevs, and Thomas for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. I shall order the Respondent to compensate Brown, Mevs, and Thomas for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and to file with the Regional Director for Region 5 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition, I shall order the Respondent to file with the Regional Director for Region 5 a copy of Brown's, Mevs', and Thomas' corresponding W-2 forms reflecting the backpay awards.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.[26]

ORDER

The Respondent, Community Counseling & Mentoring Services, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and/or maintaining any rule or directive that prohibits employees from speaking to their coworkers about their terms and conditions of employment and/or from making negative comments to coworkers about the Respondent or how the Respondent runs its programs.

(b) Threatening employees with unspecified reprisals if they violate a Respondent rule or directive prohibiting employees from speaking to their coworkers about their terms and conditions of employment and/or from making negative comments to coworkers about the Respondent or how the Respondent runs its programs

(c) Threatening employees with loss of employment because they question their working conditions, engage in discussions with coworkers regarding their working conditions, or make negative comments to coworkers about the Respondent or how the Respondent runs its programs.

[26] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Creating the impression that employees' protected concerted activities are under surveillance.

(e) Interrogating employees about the protected concerted activities of themselves or other employees.

(f) Discharging or otherwise discriminating against any employee for engaging in protected concerted activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the work rule and directive referenced above.

(b) Advise employees in writing that the rule and directive set forth above have been rescinded.

(c) Within 14 days of this Order, offer Denise Brown, Natalie Mevs, and Lynda Thomas full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Denise Brown, Natalie Mevs, and Lynda Thomas whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(e) Compensate Denise Brown, Natalie Mevs, and Lynda Thomas for their search-for-work and interim employment expenses in the manner set forth in remedy section of this decision.

(f) Compensate Denise Brown, Natalie Mevs, and Lynda Thomas for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

(g) File with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(h) File with the Regional Direct for Region 5 a copy of corresponding W-2 forms reflecting the backpay awards to Denise Brown, Natalie Mevs, and Lynda Thomas.

(i) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing

that this has been done and that the discharge will not be used against them in any way.

(j) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(k) Within 14 days after service by the Region, post at its facility in Largo, Maryland, copies of the attached notice marked "Appendix."[27] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted, including all bulletin boards in break rooms located on units where bargaining unit employees work. In addition to physical posting of paper notices, the notices shall be distributed electronically to all current employees and former employees employed by the Respondent at any time since October 24, 2019, by means including email, posting on an intranet or an internet site, and/or other electronic means if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(l) Within 21 days after service by the Region, file with the Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. April 13, 2021

PAUL BOGAS
Administrative Law Judge

[27] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT orally promulgate and/or maintain a rule or directive that prohibits you from speaking to coworkers about terms and conditions of employment or from making negative comments to coworkers about Community Counseling & Mentoring Services, Inc. (CCMS) and/or how CCMS runs its programs.

WE WILL NOT threaten you with unspecified reprisals for speaking to your coworkers about your terms and conditions of employment or for making negative comments to coworkers about CCMS and how CCMS runs its programs.

WE WILL NOT threaten you with loss of employment because you ask questions regarding working conditions, engage in discussions with coworkers regarding your working conditions, or make negative comments to coworkers about CCMS or how CCMS runs its programs.

WE WILL NOT create the impression that we are engaged in surveillance of your protected concerted activities.

WE WILL NOT interrogate you about your protected concerted activities or those of other employees.

WE WILL NOT discharge or otherwise discriminate against you because you exercised your right to engage in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the work rule and directive that prohibit you from speaking to coworkers about your terms and conditions of employment and/or from making negative comments to coworkers about CCMS or how CCMS runs its programs. WE WILL notify you in writing that we have done this.

WE WILL offer Denise Brown, Natalie Mevs, and Lynda Thomas full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Denise Brown, Natalie Mevs, and Lynda Thomas whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, less any net interim earnings, plus interest compounded daily, and WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

WE WILL compensate Denise Brown, Natalie Mevs, and Lynda Thomas for their search-for-work and interim employment expenses.

WE WILL compensate Denise Brown, Natalie Mevs, and Lynda Thomas for the adverse tax consequences, if any, of receiving a lump-sum backpay award and WE WILL file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 5 of the National Labor Relations Board a copy of the W-2 forms reflecting the backpay awards to Denise Brown, Natalie Mevs, and Lynda Thomas.

WE WILL remove from our files any reference to the unlawful discharges of Denise Brown, Natalie Mevs, and Lynda Thomas, and WE WILL, within 3 days thereafter notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

Community Counseling & Mentoring Service, Inc.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's tool-free number 18-44-762-NLRB (1-844-762-6572). You may also obtain information from the Board's website: www.nlrb.gov. Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service by visiting its website at https://www.federalrelay.us/tty, calling one of its toll free numbers and asking its Communications Assistant to call our tool free number at 1-844-762-NLRB.

Bank of America Center, Tower II
100 S. Charles Street, STE 600
Baltimore, Maryland 21201
(410) 962-2822, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/05-CA-255979 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (410) 962-2880.